

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

February 21, 2008

AMENDED APPEAL BRIEF

Dear Sir:

In response to the Notice of Non-Compliant Appeal Brief mailed on January 24, 2008, attached herewith is an amended Appeal Brief pursuant to 35 U.S.C. §134 and 37 C.F.R. §41.37 for the above-identified patent application in support of a Notice of Appeal filed on August 29, 2007, which was responsive to the final Office Action mailed on May 29, 2007.

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I. REAL PARTY IN INTEREST

The real party in interest in the above-entitled application is Koninklijke Philips Electronics N.V., Eindhoven, NL.

II. RELATED APPEALS AND INTERFERENCES

The undersigned attorney/agent, the appellants, and the assignee are not aware of any related appeals or interferences that would directly affect, or be directly affected by, or have a bearing on the Board's decision in this pending appeal.

III. STATUS OF THE CLAIMS

Claims 1-28 are rejected and are all on appeal.

IV. STATUS OF AMENDMENTS

An amendment submitted July 30, 2007 was entered. No claims were amended.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

With respect to independent claim 1, a method for determining access to an electronic media object from one of a local or remote source is provided. (Page 2, line 32 to page 3, line 6; page 5, lines 14-21). The method includes analyzing at least one of audio and image information associated with said electronic media object. (Page 7, lines 26-27; page 8, lines 1-5). The method also includes preventing access to said electronic media object if said electronic media object contains sufficient inappropriate content items to exceed a known threshold-of at least one predefined inappropriate content item. (Page 10, lines 1-8). The inappropriate content item is selected from visual items. (Page 10, lines 9-15). The visual items are determined by evaluation of facial expressions to determine content items selected from the group consisting of: anger, fear disgust, sadness, surprise and intensity of expression. (Page 9, lines 5-24). The method also includes allowing access to said electronic media object if said electronic media object contains at least one predefined appropriate content item. Access is allowed at least based on recognizing at least one person included in said predefined appropriate content. (Page 5, Lines 7-13).

With respect to independent claim 12, a system for determining access to an electronic media object includes a memory for storing computer readable code and a processor operatively

coupled to said memory. (Page 2, line 32 to page 3, line 6; page 5, lines 14-21). The processor is configured to analyze at least one of audio and image information associated with said electronic media object and to prevent access to said electronic media object if said electronic media object contains sufficient inappropriate content items to exceed a known threshold-of at least one predefined inappropriate content item. (Page 9, lines 26-27; page 8, lines 1-5; page 10, lines 9-15). The inappropriate content item is selected from visual items. (Page 10, lines 9-15). The visual items are determined by evaluation of facial expressions to determine content items selected from the group consisting of: anger, fear disgust, sadness, surprise and intensity of expression. (Page 9, lines 7-26). The processor is configured to allow access to said electronic media object if said electronic media object contains at least one predefined appropriate content item. (Page 9, lines 27-33). Access is allowed at least based on recognizing at least one person included in said predefined appropriate content. (Page 5, lines 5-13).

With respect to independent claim 23, an article of manufacture for preventing access to an electronic media object from one of a remote or local source includes a computer readable medium having computer readable code means embodied thereon. (Page 2, lines 32 to page 3, line 6, page 5, lines 14-21). The computer readable program code means includes a step to analyze at least one of audio and image information associated with said electronic media object and a step to prevent accessing said electronic media object if said electronic media object contains sufficient inappropriate content items to exceed a known threshold-of at least one predefined inappropriate content item. (Page 7, lines 26-27; page 10 lines 1-8). The inappropriate content item is selected from visual items. (Page 10, lines 9-15). The visual items are determined by evaluation of facial expressions to determine content items selected from the group consisting of: anger, fear disgust, sadness, surprise and intensity of expression. (Page 9, lines 5-24). The computer readable code means also includes a step to allow access said electronic media object if said electronic media object contains at least one predefined appropriate content item. (Page 9, lines 27-33). Access is allowed at least based on recognizing at least one person included in said appropriate content. (Page 5, lines 5-13).

With respect to independent claim 24, a system for preventing access to an electronic media object includes means for analyzing at least one of audio and image information associated with said electronic media object. (Page 2, lines 32 to page 3 line 6, page 5, lines 14-21). The system also includes means for preventing a user from accessing said electronic media

object if said analyzing step determines that said electronic media object contains sufficient inappropriate content items to exceed a known threshold-of at least one predefined inappropriate content item. (Page 7, lines 26-27; page 10 lines 1-8). The inappropriate content item is selected from visual items. (Page 10, lines 9-15). The visual item is determined by evaluation of facial expressions to determine content items selected from the group consisting of: anger, fear disgust, sadness, surprise and intensity of expression. (Page 9, lines 7-26). The system also includes means for allowing said user to access said electronic media object if said means for analyzing determine that said electronic media object contains at least one predefined appropriate content item. (Page 9, lines 27-33). The means for analyzing allow said access at least based on recognizing at least one person included in said predefined appropriate content. (Page 5, lines 5-13).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-28 are unpatentable under 35 U.S.C. 112, first paragraph as containing subject matter which was not adequately described in the specification.

Whether claims 1, 5, 6, 8-10, 12, 16, 17, 19-21 and 23-28 are unpatentable under 35 U.S.C. 103(a) over Emens (US 6,493,744) in view of Durden (US 20040250272).

Whether claims 2-4 and 13-15 are unpatentable under 35 U.S.C. 103(a) over Emens and Durden as applied to claims 1 and 12 and further in view of Cragun (5,832,212).

Whether claims 7 and 18 are unpatentable under 35 U.S.C. 103(a) over Emens and Durden as applied to claims 1, 6 and 12 and further in view of Forsyth.

Whether claims 11 and 22 are unpatentable under 35 U.S.C. 103(a) over Emens in view of Durden as applied to claims 1 and 12 and further in view of PR Newswire.

VII. ARGUMENTS

A. The Rejection of Claims 1-28 under 35 U.S.C. 112, first paragraph

Claims 1-28 stand rejected under 35 U.S.C. 112, first paragraph. It is submitted that the Office Action incorrectly applies an unduly restrictive, verbatim analysis of the present specification and that the resulting rejection is improper. Consequently, the present rejection should be withdrawn.

Independent claim 1 is directed to a method for determining access to an electronic media object that includes the step of:

preventing access to said electronic media object if said electronic media object contains sufficient inappropriate content items to exceed a known threshold of at least one predefined inappropriate content item, wherein said inappropriate content item is selected from visual items, said visual items being determined by evaluation of facial expressions to determine content items selected from the group consisting of: anger, fear, disgust, sadness, surprise, and intensity of expression . . .

The underlined items correspond to limitations added during prosecution of the present application. Independent claims 12, 23, and 24 are similar.

The Office Action states that the Examiner searched the original specification and claim language and found all references of “threshold” and “facial analysis.” Following this limited verbatim review, the Office Action concluded that there is no description how “threshold” and “facial analysis” are combined to produce the limitation set forth in the claim. The Advisory Action reaffirmed this conclusion, stating that there is no “definitive description on how a threshold is used in determining if a media object should be prevented from being accessed.” It is submitted that both the rationale and the resulting conclusion are improper.

The written description requirement of 35 U.S.C. 112, first paragraph is satisfied if the disclosure reasonably conveys to those skilled in the art that the inventor had possession of the subject matter in question. *Fujikawa v. Wattanasin*, 93 F.3d 1559, 39 USPQ 1895 (Fed. Cir. 1996). There is no *ipsis verbis* or verbatim test; it must only be reasonably clear what the invention is and that the patent specification conveys that meaning. *All Dental Prodx v. Advantage Dental Products*, 309 F.3d 774, 64 USPQ2d 1945 (Fed. Cir. 2002). Moreover, every nuance in the claim need not be explicitly described, so long as one skilled in the art would have understood the inventor to be in possession of the claimed invention at the time of filing. *In re Alton*, 76 F.3d 1168, 37 USPQ2d 1578 (Fed. Cir. 1996).

Beginning near the bottom of page 4 and with reference to Figure 1, the present application describes an access control system 100 that prevents access to objectionable content based on an analysis of the audio or visual information associated with the content.

The application provides various examples of techniques that can be used to detect inappropriate content such as violence or nudity, the presence of stop words, and performers who are known to appear in adult films (or conversely, performers who are known to appear in entertainment of a more general interest).

As depicted in Figure 2 and described in the corresponding text, the type of content that is deemed inappropriate may be situation dependent. For example, the threshold for determining inappropriate content may be higher for an adult than for a child. Additionally, in the example presented, it is clearly not necessary that all users be prevented from accessing all types of objectionable content. While only a subset of the various permutations is explicitly described, those of ordinary skill would understand that numerous other combinations of criteria could be selected. For example, some users may be prevented from accessing content that includes some or all of the stop words; others may be prevented from accessing violent content, and so on.

As described beginning at the top of page 6, and also with reference to Figures 1 and 4, an audio/visual content evaluation process 400 analyzes the content associated with a given media object to prevent users from accessing objectionable content. Figure 4, which describes an example evaluation process, is reproduced below:

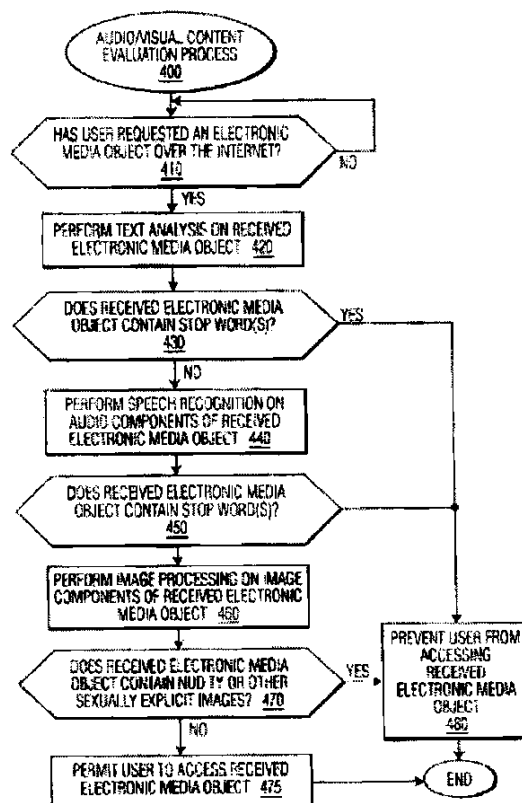


FIG. 4

As can be seen from Figure 4, and is also described beginning at page 6 of the application, the process includes a number of analysis and testing steps. The nature of the analysis varies with the type of inappropriate content. In the case of stop words, for example, the application describes example text analysis and speech recognition techniques.

At the top of page 8 and bridging to page 9, the application also describes various examples of inappropriate visual content, including nudity, sexually explicit images, and violence. In the case of nudity and sexually explicit images, the application describes analysis techniques such as searching for skin, classifier-based methods, and so on. In the case of violence, the application devotes most of page 9 to the use of facial analysis techniques to identify indicia of imagery such as anger, fear, disgust, sadness, surprise, and intensity of expression.

The result of the evaluation process 400 depends on the results of the various analysis operations. In the example of Figure 4, the user is prevented from accessing the content if any of the various analyses identify inappropriate content; the user is permitted

to access the content if inappropriate content is not identified. Of course, one skilled in the art would already recognize that the foregoing logic scheme is not exclusive and that variations are contemplated, for example to implement the various user-specific permutations or thresholds noted above in relation to Figure 2.

This understanding is explicitly confirmed by the text of the application. Near the top of page 8, the application states that, if it is determined at 430, 450, or 470 that the electronic media object contains content that is inappropriate for the user (*e.g.*, stop words and/or or inappropriate visual content such as nudity, sexually explicit content, or violence), then the user is prevented from accessing the content. Thus, it is clear not only that the criteria used to identify inappropriate content may be situation-dependent, but also that the criteria may include the identification of violent content.

That the various criteria may be may be aggregated or thresholded as desired in a given situation is also addressed specifically beginning at page 10, line 1 of the application:

In a further variation, a number of the conditions 430, 450 and 470 can be aggregated to present access to an electronic media object, *e.g.* if a certain threshold of stop words and nudity are present in an electronic media object.

By the plain text of the passage, it is evident that the tresholding using stop words and nudity is presented as merely one example to illustrate the larger point that the various criteria can be thresholded as desired. Moreover, one of ordinary skill in the art would recognize that, as discussed in the application, nudity is but one subset of inappropriate visual content.

The example thus drives home the point that the criteria can be applied to various subsets of inappropriate visual content, of which violence is clearly a member. That this is so would be evident to the skilled person, even though each and every permutation is not explicitly listed. Indeed, reading the illustrative example to exclude thresholding as a function of violent content would be contrary to the plain mean of the application. As is also made clear by the application, violence can be determined by the evaluation of facial expression to identify indicia such as anger, fear, disgust, sadness, surprise, and intensity of expression.

Therefore, it is clear that the claim limitation of *preventing access to said electronic media object if said electronic media object contains sufficient inappropriate content items to exceed a known threshold of at least one predefined inappropriate content item, wherein said inappropriate content item is selected from visual items, said visual items being determined by evaluation of facial expressions to determine content items selected from the group consisting of: anger, fear, disgust, sadness, surprise, and intensity of expression* is amply supported by the application as filed.

Withdrawal of the 35 USC 112, first paragraph rejection of claim 1-28 is therefore requested for at least the foregoing reasons.

It is noted that the meaning of the claim terms should not be limited in any way by the foregoing analysis, which focuses on support from the claims under 35 U.S.C. 112, first paragraph. That is, claim support and claim construction are two entirely different issues and should not be confused.

B. The Rejection of Claims 1, 5, 6, 8-10, 12, 16, 17, 19-21 and 23-28 Under 35 U.S.C. 103(a)

Claims 1, 5, 6, 8-10, 12, 16, 17, 19-21 and 23-28 stand rejected under 35 U.S.C. 103(a) over Emens in view of Durden

CLAIM 1

It is submitted that the Office Action fails to establish a *prima facie* case of obviousness of claim 1 because the cited references do not disclose each and every limitation of the claimed invention. It is also submitted that the proposed combination of the references is the result of an impermissible hindsight analysis.

Independent **claim 1** is directed to a method for determining access to an electronic media object. The method includes, among other things:

- preventing access to said electronic media object if said electronic media object contains sufficient inappropriate content items to exceed a known threshold of at least one predefined inappropriate content item, wherein said inappropriate content item is selected from visual items, said visual items being determined by evaluation of facial expressions to determine content items selected from the group consisting of: anger, fear, disgust, sadness, surprise, and intensity of expression; and

- allowing access if the media object contains at least one predefined appropriate content item, wherein the content is allowed at least based on recognizing at least one person included in said predefined appropriate content.

First, the cited references to not disclose the step of preventing in combination with the step of allowing as required by claim 1. More specifically, claim 1 requires both preventing access to the media object depending on the claimed facial expression evaluation and allowing access to the media object based on recognizing at least one person included in predefined appropriate content.

The Office Action concedes that Emens does not disclose a known threshold of at least one predefined inappropriate content item, wherein said inappropriate content item is selected from visual items, said visual items being determined by evaluation of facial expressions to determine content items selected from the group consisting of: anger, fear, disgust, sadness, surprise, and intensity of expression.

To remedy this deficiency, the Office Action asserts that applicants have admitted that facial expression can be analyzed and that nudity can be determined based on image exceeding a predefined threshold [sic]. The Office Action then cites to Durden paragraph [0069] as disclosing allowing access to the electronic media object if the object contains at least one predefined appropriate content item, wherein access is allowed at least based on said predefined appropriate content. Moreover, the Office Action states that, because a person is recognizable either by voice or image recognition as a specific content rating vector per Emens (Abstract), Durden is shown to allow access based upon determining predefined appropriate content based on content rating.

This assertion is traversed.

To meet the claimed preventing step, the Office Action first requires that the method of Emens be modified to replace the recognition of a *person* as allegedly taught by Emens with the *facial expression* evaluation techniques of the allegedly admitted prior art. If modified as suggested by the Office Action to replace the recognition of a person with an evaluation of facial expression, the method would both prevent and allow access to a given media item based on *facial expression*.

Nonetheless, and to meet the claimed allowing step, the Office Action continues to rely on the recognition of a *person* as allegedly taught by Durden as unmodified. If Durden's method were to remain unmodified, however, the method would both prevent and allow access to the media item based on *recognition of a person*.

Thus, the proposed modification would not result in a method that includes both the steps of preventing access to a media item based on an evaluation of *facial expression* and allowing access to the media item based on *recognizing a person*. As the references, when combined in the matter suggested by the Office Action, fail to fairly disclose or suggest each and every limitation of the claimed invention, the Office Action fails to establish a *prima facie* case of obviousness. The present rejection of claim 1 should therefore be withdrawn.

It is further submitted that any attempt to selectively modify aspects of the various references to arrive at the claimed preventing (*i.e.*, based on facial expression) and allowing (*i.e.*, based on recognizing a person) steps is based on an impermissible hindsight analysis that uses the present claims as a blueprint for combining of the cited references. Indeed, such a hindsight analysis falls squarely within the recent admonition of the U.S. Supreme Court in *KSR v. Teleflex* that "factfinders should be aware . . . of the distortion of hindsight bias and must be cautious of arguments reliant on *post-facto* reasoning." The present rejection of claim 1 should be withdrawn for at least this additional reason.

CLAIMS 5, 6, and 8-10

It is submitted that claims 5, 6, and 8-10 are allowable at least by virtue of their dependency from claim 1.

CLAIM 12

Independent claim 12 is directed to a system for determining access to an electronic media object. The discussion above with respect to claim 1 applies, *mutatis mutandis*, to claim 12. The rejection of claim 12 should therefore be withdrawn.

CLAIMS 16, 17, and 19-21

It is submitted that claims 16, 17, and 19-21 are allowable at least by virtue of their dependency from claim 12.

CLAIM 23

Independent claim 23 is directed to an article of manufacture for preventing access to an electronic media object. The discussion above with respect to claim 1 applies, *mutatis mutandis*, to claim 23. The rejection of claim 23 should therefore be withdrawn.

CLAIM 24

Independent claim 24 is directed to a system for preventing access to an electronic media object. The discussion above with respect to claim 1 applies, *mutatis mutandis*, to claim 24. The rejection of claim 24 should therefore be withdrawn.

CLAIMS 25-28

It is submitted that claims 25-28 are allowable at least by virtue of their dependency from claim 24.

C. The Rejection of Claims 2-4 and 13-15 under 35 U.S.C. 103(a)

Claims 2-4 and 13-15 stand rejected as unpatentable under 35 U.S.C. 103(a) over Emens and Durden as applied to claims 1 and 12 and further in view of Cragun. It is submitted that claims 2-4 and 13-15 are allowable at least by virtue of their dependency from their respective base claims 1 and 12.

D. The Rejection of Claims 7 and 18 under 35 U.S.C. 103(a)

Claims 2-4 and 13-15 stand rejected as unpatentable under 35 U.S.C. 103(a) over Emens and Durden as applied to claims 1 and 12 and further in view of Forsyth. It is submitted that that these claims are allowable at least by virtue of their dependency from their respective base claims 1 and 12.

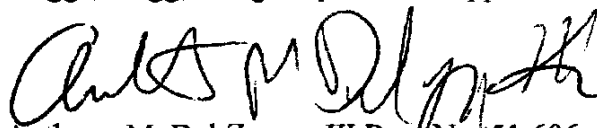
E. The Rejection of Claims 11 and 22 under 35 U.S.C. 103(a)

Claims 11 and 22 stand rejected as unpatentable under 35 U.S.C. 103(a) over Emens in view of Durden as applied to claims 1 and 12 and further in view of PR Newswire. It is submitted that that these claims are allowable at least by virtue of their dependency from their respective base claims 1 and 12.

VIII. CONCLUSION

In view of the foregoing, it is submitted that the claims herein distinguish patentably and non-obviously over the prior art of record, and reversal of the rejection of the claims is respectfully requested.

Respectfully submitted,
Driggs, Hogg, Daugherty & Del Zoppo Co., L.P.A.

A handwritten signature in black ink, appearing to read 'Anthony M. Del Zoppo, III', is written over the printed name and registration number.

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IX. CLAIM APPENDIX

1. (Previously presented) A method for determining access to an electronic media object from one of a local or remote source, comprising the steps of:

analyzing at least one of audio and image information associated with said electronic media object;

preventing access to said electronic media object if said electronic media object contains sufficient inappropriate content items to exceed a known threshold-of at least one predefined inappropriate content item, wherein said inappropriate content item is selected from visual items, said visual items being determined by evaluation of facial expressions to determine content items selected from the group consisting of: anger, fear disgust, sadness, surprise and intensity of expression; and

allowing access to said electronic media object if said electronic media object contains at least one predefined appropriate content item;

wherein said access is allowed at least based on recognizing at least one person included in said predefined appropriate content.

2. (Previously presented) The method of claim 1, further comprising the step of:

storing a user profile indicating the Internet browsing privileges of said user.

3. (Previously Presented) The method of claim 2, wherein said user profile indicates categories of content that said user may access.

4. (Previously presented) The method of claim 2, further comprising the step of:

comparing said electronic media object to said Internet browsing privileges of said user.

5. (Previously presented) The method of claim 1, further comprising the step of:

performing speech recognition on said electronic media object to determine if said electronic media object includes one or more predefined stop words.

6. (Previously presented) The method of claim 1, further comprising the step of:
performing image processing on said electronic media object to determine if said electronic media object includes nudity.

7. (Original) The method of claim 6, wherein said nudity is determined by identifying human skin.

8. (Previously presented) The method of claim 1, further comprising the step of:
performing image processing on said electronic media object to determine if said electronic media object includes sexually explicit images.

9. (Previously presented) The method of claim 1, further comprising the step of:
performing image processing on said electronic media object to determine if said electronic media object includes violent images.

10. (Previously Presented) The method of claim 1, wherein said electronic media object is obtained from a network connection.

11. (Previously Presented) The method of claim 1, wherein said electronic media object is generated in real-time by a camera.

12. (Previously presented) A system for determining access to an electronic media object, comprising:
a memory for storing computer readable code; and
a processor operatively coupled to said memory, said processor configured to:
analyze at least one of audio and image information associated with said electronic media object;
prevent access to said electronic media object if said electronic media object contains sufficient inappropriate content items to exceed a known threshold-of at least one predefined inappropriate content item, wherein said inappropriate content item is selected visual items, said

visual items being determined by evaluation of facial expressions to determine content items selected from the group consisting of: anger, fear disgust, sadness, surprise and intensity of expression; and

allowing access said electronic media object if said electronic media object contains at least one predefined appropriate content item;

wherein said access is allowed at least based on recognizing at least one person included in said predefined appropriate content.

13. (Previously presented) The system of claim 12, wherein said processor is further configured to:

store a user profile indicating the Internet browsing privileges of said user.

14. (Previously Presented) The system of claim 13, wherein said user profile indicates categories of content that said user may access.

15. (Previously presented) The system of claim 13, wherein said processor is further configured to:

compare said electronic media object to said Internet browsing privileges of said user.

16. (Previously presented) The system of claim 12, wherein said processor is further configured to:

perform speech recognition on said electronic media object to determine if said electronic media object includes one or more predefined stop words.

17. (Previously presented) The system of claim 12, wherein said processor is further configured to:

perform image processing on said electronic media object to determine if said electronic media object includes nudity.

18. (Original) The system of claim 17, wherein said nudity is determined by identifying human skin.

19. (Previously presented) The system of claim 12, wherein said processor is further configured to:

perform image processing on said electronic media object to determine if said electronic media object includes sexually explicit images.

20. (Previously presented) The system of claim 12, wherein said processor is further configured to:

perform image processing on said electronic media object to determine if said electronic media object includes violent images.

21. (Previously Presented) The system of claim 12, wherein said electronic media object is obtained from a network connection.

22. (Previously Presented) The system of claim 12, wherein said electronic media object is generated in real-time by a camera.

23. (Previously presented) An article of manufacture for preventing access to an electronic media object from one of a remote or local source, comprising:

a computer readable medium having computer readable code means embodied thereon, said computer readable program code means comprising:

a step to analyze at least one of audio and image information associated with said electronic media object;

a step to prevent accessing said electronic media object if said electronic media object contains sufficient inappropriate content items to exceed a known threshold-of at least one predefined inappropriate content item, wherein said inappropriate content item is selected from visual items, said visual items being determined by evaluation of facial expressions to determine content items selected from the group consisting of: anger, fear disgust, sadness, surprise and intensity of expression; and

a step to allow access said electronic media object if said electronic media object contains at least one predefined appropriate content item;

wherein said access is allowed at least based on recognizing at least one person included in said appropriate content.

24. (Previously presented) A system for preventing access to an electronic media object, comprising:

means for analyzing at least one of audio and image information associated with said electronic media object; and

means for preventing a user from accessing said electronic media object if said analyzing step determines that said electronic media object contains sufficient inappropriate content items to exceed a known threshold-of at least one predefined inappropriate content item, wherein said inappropriate content item is selected from visual items, said visual items being determined by evaluation of facial expressions to determine content items selected from the group consisting of: anger, fear disgust, sadness, surprise and intensity of expression; and

means for allowing said user to access said electronic media object if said means for analyzing determine that said electronic media object contains at least one predefined appropriate content item;

wherein said means for analyzing allow said access at least based on recognizing at least one person included in said predefined appropriate content.

25. (Previously presented) The method of claim 1, wherein said at least one person includes at least one actor who appears in regular programming.

26. (Previously presented) The system of claim 12, wherein said at least person includes at least one actor in regular programming.

27. (Previously presented) The article of manufacture of claim 23, wherein said at least person includes at least one actor in regular programming.

28. (Previously presented) The system of claim 24, wherein said at least person includes at least one actor in regular programming.

X. EVIDENCE APPENDIX

None.

XI. RELATED PROCEEDINGS APPENDIX

None known to undersigned attorney/agent.